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Supreme Court of the United States

OCTOBER TERM, 1952.

No. .....

THE CRUMMER COMPANY, AND R. E. CRUMMER & COMPANY, PETITIONERS,

VS.

JESSIE BALL DUPONT ET AL., AS TRUSTEES, ETC., ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on May 2, 1952 (R. 666), which denied review of findings and an order of the United States District Court for the Southern District of Florida transferring an action brought by petitioners in the said district to the United States District Court for the Northern District of Florida, Tallahassee Division.

OPINIONS BELOW.

The findings and order of the District Court (R. 628-643) are unreported.

The opinion of the Court of Appeals (R. 663-665) is reported in 196 F. 2d 468.

JURISDICTION.

The judgment of the Court of Appeals, denying review, was entered on May 2, 1952 (R. 666).

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED.

1. Whether, pursuant to the standards established by this court in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947), a transfer order purportedly entered under Section 1404(a) of Title 28, U. S. Code, should stand unreversed in the light of the facts[1] that:

(a) petitioners as plaintiffs in this action originally brought suit at their home forum, where they have the vital office facility to sustain the litigation,

(b) the transferor district contains the overwhelming concentration of the defendants and their business affiliates,

(c) besides the defendants, the other witnesses are concentrated in the transferor forum, since that is the principal situs of the subject matter of the action,

(d) the transfer order deprives the plaintiffs of compulsory process to secure attendance, at the trial, of defendants, their agents and employees, and the public officials who participated in the bond refundings involved in the action, and

(e) the conclusions upon which the transfer order rests are without support in the record, and are insufficient to support the said order.

2. Whether an erroneous transfer order under Section 1404(a) of Title 28, U. S. Code, is reviewable before trial, either by appeal or by extraordinary writ, considering the facts that:

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[1]It must be noted here that petitioners are *not* requesting that this Court review the facts, but on the contrary are seeking application of a *correct rule of law* to *undisputed facts.*

(a) if not corrected before trial, the error is absolutely incorrectible,

(b) no decision of the suit on the merits can redress any injury done by the order, and

(c) if not reviewable, the erroneous transfer order may more severely prejudice a plaintiff's case than a judgment of dismissal, which is reviewable.

3. Whether a plaintiff can be forced to defend a counterclaim in the transferee forum, when that counterclaim could not have been brought there as an original action, because of improper venue.

STATUTES INVOLVED.

The pertinent statutory provisions are printed in Appendix "A," *infra*, pp. 29-30.

STATEMENT.

1. The Nature of the Case.

This is an antitrust suit commenced in the Orlando Division of the United States District Court for the Southern District of Florida for $30,000,000 treble damages, of which the plaintiff, The Crummer Company, claims $22,500,000, and the plaintiff, R. E. Crummer & Company, claims $7,500,000 (R. 58). Defendants are the Florida duPont interests and their allies (R. 6, 8, 9) in a conspiracy to dominate the State of Florida and the market in its municipal securities and to destroy the plaintiffs (R. 22-58). These defendants are the trustees of the duPont Trust (three individuals and one corporation), twelve individuals (including two individuals also sued as trustees), and

four corporations, including two municipal bond houses (R. 6, 8, 9).

The plaintiffs were dealers in Florida municipal bonds in interstate commerce (R. 7, 9, 10). R. E. Crummer & Company from 1934 to 1942 was highly successful except for the damage done by the defendants (R. 14-22, 31-34, 57-58), and The Crummer Company, as successor, from 1943 to date would have been similarly successful were it not for defendants' activities (R. 14-58).

The duPont interests, as part of their program to dominate various aspects of commercial and industrial life in Florida (R. 22-57) decided about 1938 to enter the municipal bond field (R. 25-27). Organizing themselves in a series of joint endeavors, beginning in 1938 (R. 25, 28), they and the two municipal bond houses competed in the field of public finance against the plaintiff, R. E. Crummer & Company (R. 25-29). Finding, however, this competition objectionable, they conspired, beginning in 1941, to destroy R. E. Crummer & Company, thus removing its competition (R. 30). After the conspiracy was afoot, R. E. Crummer & Company, for reasons of its own, ceased business, intending to dissolve, and the plaintiff, The Crummer Company, was organized and equipped to fulfill its business position in the field of municipal finance, the change to take place as of January 1, 1943 (R. 20-22). The conspiracy having been originated against R. E. Crummer & Company was enlarged in its purpose to suppress and destroy The Crummer Company in its inception (R. 41-58). The unlawful means included the instigation of federal criminal prosecutions against officers of the plaintiffs (R. 36-38) resulting in indictments which were later dismissed (R. 38-40), interference with the procurement by The Crummer Company of a license to do business in Florida as a dealer in municipal securities (R. 41-44), the instiga-

tion of civil litigation (R. 49-52), and other acts of a predatory nature (R. 30).

The defendants have denied the existence of any such conspiracy (R. 65-224), have denied various specific acts as alleged (R. 65-224), or in the case of admitted acts have asserted the legality thereof (R. 65-224). The defendants Clyde C. Pierce Corporation and Clyde C. Pierce individually have filed a counterclaim against R. E. Crummer & Company alleging that this plaintiff during its business life was itself a monopoly in its Florida operations and dominated or controlled the various local taxing units of the State, especially in their fiscal affairs (R. 362, 540). The duPonts and other defendants have made similar allegation as a defense and have asserted that plaintiffs committed other improper acts in connection with their business (R. 65-224).

2. Location of the Parties.

Both plaintiffs have their only Florida office, and the facilities necessary to sustain this litigation, in the Southern District of Florida (R. 363, 629-630). Eleven individual and four corporate defendants are residents of, and are found in, the Southern District (R. 631-632). One individual and one corporate defendant (Edward Ball and the St. Joe Paper Company) are residents of the Northern District of Florida (R. 631), although both have places of business in the Southern District (R. 363). Service of process upon every defendant except Elbert Dent was made in the Southern District (R. 63).

3. Proceedings in the District Court.

Notwithstanding the facts stated in the preceding paragraph, all but two of the defendants joined in a motion to transfer the cause to the United States District Court

for the Northern District of Florida, Tallahassee Division, under Section 1404(a) of the new Judicial Code (R. 318-320, 629). The motion was argued before the Honorable William J. Barker on November 13, 1950 (R. 464) and over five months later Judge Barker filed findings and an order transferring the case to Tallahassee (R. 628-643).

The Court found *inter alia* that the parties are located as indicated above (p. 6, R. 629, 632); that the principal plaintiff herein is R. E. Crummer & Company, and that since it has been inactive since 1943 and has no Florida resident officers, in effect its convenience need not be considered (R. 630, 631). No finding is made as to the convenience of the plaintiff, The Crummer Company. [R. E. Crummer & Company claims $7,500,000; The Crummer Company, its immediate successor,[1] claims $22,500,000 (R. 58). No finding is made as to the convenience of defendants, or any of them. Although it is arguable that most defendants have impliedly asserted that Tallahassee is more convenient by moving to transfer, these defendants have failed to show, and cannot show, that the trial in a place, which is on the average nearly twice as far (Finding 3, R. 629; Findings 1-4, R. 631, 632; Appendix B) as the transferor forum is more convenient to them. Clearly the court *failed even to consider the convenience*[2] *or "private interest"*[3] *of either plaintiff* even though they brought suit in their home division, the location of their principal, and only Florida office and in the home district of 80% of de-

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[1]In a similar situation, the court held the convenience of an inactive corporation to be the convenience of its successor. *Glasfloss Corp.* v. *Owens-Corning Glass Corp.*, 90 F. Supp. 967 (S. D. N. Y., 1950).

[2]Title 28, U. S. C., Sec. 1404(a).

[3]*Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947).

fendants (Findings 1-4, R. 631-632).] The Court also failed to make any finding as to convenience of defendants in moving to Tallahassee for a protracted trial (Findings 1-4, R. 631, 632).

Findings 2, 8 and 9 (R. 633, 634) identify with Tallahassee 45 percent of the overt acts charged and characterize that as the probable locus of most of the witnesses and oral evidence. [These are acts of official nature, matters of public record and common knowledge[1] (Finding 2, R. 633; Compl. pars. 38 (c), (d), R. 32, 33; 39(b)-39(h); 40(b), R. 41-44, 45; 41(a) R. 49). Thus, introduction into evidence will be a mere formality, and the real problem is *proof* of the *motives* of officials, and *motives* and *methods* of defendants (90% of whom reside, or have important offices in, the Southern District) in inducing officials to act wrongfully, and the *effect* upon plaintiffs' previously successful business, which had no significant connection with Tallahassee.]

The court also found that Tallahasse is the location of a great reservoir or pool of records and documents "to which recourse can be had from time to time, and certified

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[1]*e. g.*, Following other devious attacks disguised as official acts (R. 29-44, Compl. Pars. 35-39) defendants induced the Attorney General of Florida to institute quo warranto proceedings against plaintiff, The Crummer Company, unsuccessfully seeking to revoke its permit to transact any business in Florida (R. 44, Compl. 39(h)). The proceedings and the termination in favor of The Crummer Company are matters of public record, *State ex. rel. Watson* v. *The Crummer Company*, 15 So. 2d 441 (1943), susceptible of judicial notice and requiring only the simplest of explanations. *What must be proved* are the *motives* of the then Attorney General (now a resident of Tampa, *Southern District* of Florida) (R. 589), the *methods* and *motives* of defendants in inducing him so to act, and the ruinous *effect* upon plaintiff's business focused upon its Orlando offices.

copies taken from day to day during the hurley-burley (*sic*) of trial" (R. 635-639; Finding 5, 636) [These are public records, certified copies can be obtained with ease and are admissible into evidence without further authentication.[1] There was no denial of plaintiffs' demonstration in open court that the relevant information referred to in the moving papers had, for years, been made available to the public by the State Comptroller by means of printed pamphlets so that such information was already collated and available for introduction into evidence in certified form (R. 592-593). Of course these findings also ignore the planning and the disclosure and winnowing of documentary evidence which will take place at pre-trial conferences; to suggest the necessity of day-to-day access to public records during the hurley-burley of trial is little short of ludicrous. The important records, which cannot be obtained as a matter of course, are to be found in the files of defendants and plaintiffs and these files are located in the Southern District of Florida, either in Orlando, or nearer Orlando than Tallahassee (R. 358, 359, 363, 550, 551, 552, 562, 587). Thus the above findings ignore the convenience of the parties (all of whom can obtain certified copies of any records by mail from Tallahassee), obviously show no convenience to witnesses and cannot be based upon the interest of justice when they form the basis for moving the action away from the district where the non-public records are located. This result is not only contrary to the standards of 1404(a) but also flies in the face of the definitive case on *forum non conveniens, Gulf Oil Corp.* v. *Gilbert*[2]].

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[1]Sec. 92.12, Florida Statutes, 1941, Rule 43, Federal Rules of Civil Procedure (See Appendix A).

[2]330 U. S. 501 (1947); holding "relative ease of access to sources of proof" an important factor in applying the *forum non conveniens* doctrine.

Based upon its erroneous finding that 45% of the overt acts "occurred" in Tallahassee (p. 8, above), the court found that, since neither side had identified by names and addresses any witnesses to be called, most of plaintiffs' witnesses would come from the Northern District [to establish the commission of acts of official character evidenced by public records (R. 640-641).] [Although defendants had not identified any prospective witnesses, except by general references to unnamed government employees, *plaintiffs* had identified *willing* witnesses in the Orlando Division by name and address (R. 358-359) and had identified defendants, their affiliates, and employees, presumably *unwilling* witnesses in the Southern District (R. 367, 577). This "finding" unquestionably ignores the uncontroverted facts before the court when it decided to order the transfer.]

Apparently to balance this erroneous conclusion just discussed, the court also found that the court in the Tallahassee Division has ample powers to compel attendance of *parties* and production of their records *at trial* there, and cites Rules 5, 26, 30 and 36, Federal Rules Civil Procedure (Finding 1, R. 639). [Plainly this finding as to a crucial matter[1] is erroneous as a matter of law. Rules 26, 30 and 36 pertain to *discovery processes* only; Rule 5 makes service on a party's attorney equal to service on the party, but no authority has been cited or found which permits its extension to trial witness subpoenas. Rule 45(e)(1) authorizes such subpoenas to reach any where within the district but only 100 miles from the seat of trial when directed outside the district. All Florida parties, save two (R. 629-

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[1]*Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947) holding "the availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses" as important factors.

632), reside in the Southern District, nearer, and in most cases much nearer, to Orlando than Tallahassee. *All* Florida parties are amenable to trial witness subpoenas issuing from Orlando[1]. Only two can be reached from the Tallahassee Division.[2]

As plaintiffs pointed out in their Controverting Affidavit (R. 362), ten of the twelve taxing units[3] singled out in the Complaint or Answers and Counterclaim of the defendants as being the *loci* of particular overt acts, are much closer to Orlando than Tallahassee (R. 362).

If the refundings which occurred in the counties mentioned in the moving papers[4] are deemed sufficiently relevant to the case to justify serious attention to the public records in Tallahassee, it was proved equally true that the persons and officials who participated in or witnessed the refundings are and will be the *living witnesses* to same (R. 555, 566-569, 571, 603) and that a transfer on the stated theory (records at Tallahassee) defeated its own purpose by moving the case away from the living persons. *Atlantic Coast Line R. Co.* v. *Davis*, 185 F. 2d 766 (5 Cir., 1950).

Thus the trial court has transferred the case away from the residence and all records of 85 percent of the

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[1]R. 629-632; Rule 45 (e) (1), Federal Rules Civil Procedure.

[2]*Ibid.*

[3]A. In the Complaint: Citrus, Pasco, Lee and Sarasota Counties; Panama City.

B. In answers or Counterclaim: Bay, Sarasota, Lee, Manatee, Monroe, Volusia Counties; Avon Park.

[4]Of thirty counties mentioned, twenty-nine are in the Southern District of Florida nearer Orlando than Tallahassee (R. 322, 369, 370).

parties (R. 629-632, 550, 552, 555) away from the residence of all the witnesses so far identified by name and address, and away from the impact of the damage done to plaintiffs. The results are disastrous to plaintiffs; it virtually eliminates compulsory process for bringing unwilling witnesses to trial. In *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 511 (1947), Mr. Justice Jackson wrote:

> "Certainly to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants."

(See pp. 10-11, above.) It requires a complete relocation of plaintiffs and their attorneys; and it will require each party to travel an average of 196 miles more for each round trip to Tallahassee than if trial were had at Orlando.[1] The findings of the court, rather than demonstrating the convenience of parties and witnesses served by the transfer, only demonstrate a vast increase in inconvenience and expense to parties and witnesses, and fly full in the face of the statute authorizing transfers in proper cases.[2]

The lower court found that the combined dockets in the Orlando and Tampa Divisions[3] were much heavier than all the combined dockets of all the divisions in the Northern District, that a speedier trial would be possible in Tallahassee than in Orlando, and that the transfer would cause less postponement of other cases (R. 641-642). [Neither the *forum non conveniens* doctrine nor

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[1]See Appendix B.

[2]Title 28 U. S. C., Sec. 1404(a). (See Appendix A.)

[3]Judge Barker's own statement shows that the great concentration of cases is at Tampa (R. 604).

its statutory counterpart, Sec. 1404(a), contemplate consideration of the condition of the docket where venue is properly laid at a place with *some* connection with the subject matter of the suit.[1] As Judge Irving Kaufman pointed out in denying a motion to transfer an antitrust action:

> "Because of the generally recognized congested calendar conditions existing in this district, practically all applications under Section 1404(a) would have to be granted, were this consideration to receive *major recognition* by the Court."[2]

During the hearing on this very motion, Judge Barker said that a judge from the Southern District could sit in the Northern District while Judge DeVane[3] tried this case at Tallahassee (R. 607). Clearly, then, this "crowded docket" factor does not hinge upon a shortage in *judicial manpower*. It is merely a problem of finding a *courtroom* that will be free long enough to try this case. Plaintiffs asserted, *without dispute*, that the Orlando docket was current—that is, pending cases were set for trial as soon as counsel were ready (R. 604). Although both judge and courtroom are available for trial in Orlando (R. 604), in the home district of 85% of the parties, the judge has transferred the case to Tallahassee. The result is analagous to a game of musical chairs; plaintiffs move to Tallahassee, Judge DeVane, with an annual assignment for the Southern District, sits still in Tallahassee; defendants move from Jacksonville, Tampa, Lakeland, Orlando, St. Petersburg to

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[1]See Appendix C for a comparison of cases.

[2]*United States* v. *Scott and Williams*, 88 F. Supp. 531, 535 (S. D. N. Y., 1950) (Emphasis added).

[3]*Each year* Judge DeVane is also assigned *for that year* to the Southern District by the Chief Judge of the Fifth Circuit, pursuant to 28 U. S. C., Sec. 292(b).

Tallahassee; a Southern District Judge, assigned to Tampa and Orlando, or Miami, moves to Pensacola, Marianna or Gainesville to sit for Judge DeVane, who is expected to sit in both districts.

Further, the language in the court's finding in regard to speedy trial at Tallahassee (R. 641, 642) loses much of its effect in light of the fact that this action was commenced December 19, 1949, and is still in the pre-trial stage. When the pleadings are settled and the end of extensive discovery proceedings is in sight, the case can be set for trial to come up as soon as defendants desire.

4. Proceedings Seeking Review.

The plaintiffs sought a review by the Court of Appeals for the Fifth Circuit by way of a motion for leave to file a petition for mandamus, or other relief[1], but this motion was denied without opinion on April 25, 1951. This entire appellate transaction, including filing of the papers, hearing and denial of the motion, was completed in *less than one hour,* in spite of the complicated nature of the case.

To the present time, *petitioners have never had an appellate hearing to review Judge Barker's order* unless it be the few minutes expended before denial of leave to file for mandamus.

After leave to file was denied, the plaintiffs, seeking all possible remedies in the Court of Appeals, perfected an appeal in that court under Docket No. 13702, their contention being that Judge Barker's entry of the transfer order represented a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it, and is therefore separ-

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[1]Record on previous petition for certiorari, October Term, 1951, No. 323, pages a.-k.

ately appealable. *Cohen* v. *Beneficial Loan Corporation*, 337 U. S. 541 (1949); *Swift and Co.* v. *Compania Caribe*, 339 U. S. 684 (1950); *Stack* v. *Boyle*, 342 U. S. 25 (1951). Plaintiff-appellants further contended that the appeal could be treated as an application for such extraordinary relief as might be proper for the purpose of setting the transfer order aside. *Magnetic Engineering Co.* v. *Dings*, 178 F. 2d 866 (2 Cir., 1950); *Nicol* v. *Koscinski*, 188 F. 2d 537 (6 Cir., 1951).

While this appeal was pending, plaintiffs brought the order of the Fifth Circuit denying mandamus before this Court by petition for certiorari, and moved this Court to defer consideration of the petition until the appeal was disposed of by the Fifth Circuit. Certiorari was, however, denied on December 11, 1951.

After argument, the Fifth Circuit dismissed the appeal and denied plaintiffs any relief whatever by its order entered on May 2, 1952 (R. 666). In its opinion, the Court stated that the transfer order was not appealable. Regarding treatment of the appeal as a petition for extraordinary relief, the Court made no direct mention of it, but stated in connection with the previous application for mandamus, which was denied on April 24, 1951:

> "After oral argument and upon full consideration of the proceedings below, this Court entered its order denying the motion for leave to file a petition for writ of mandamus. Implicit in this order is the finding that the District Judge did not abuse his discretion" (R. 665).

The above-quoted language is the first suggestion your petitioners have received that the previous order of the Fifth Circuit was intended to represent an adjudication on the merits, or a complete sanction of the findings, con-

clusions and order of the District Court. Even if the previous order was so intended, however, petitioners respectfully submit that the original denial of mandamus was no bar to granting relief on the later application, under *Roberts* v. *United States District Court*, 339 U. S. 844 (1950).

In all of the proceedings described above, it has never been disclosed to petitioners what rule of law was applied, either by the District Court or the Court of Appeals. Petitioners earnestly submit that no correct rule of law could have been applied to jusify the result acheived in this case.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In sanctioning the transfer order of the District Judge, although it was based upon wholly inadequate grounds and constituted an abuse of discretion amounting to a usurpation of power.

2. In dismissing plaintiffs' appeal, or, in the alternative, in failing to consider the appeal as an application for extraordinary relief and grant same.

3. In denying plaintiffs any relief whatever.

REASONS FOR GRANTING THE WRIT AND BRIEF IN SUPPORT OF PETITION.

1. The decision of the Court of Appeals below, in sanctioning an order of the District Court construing 28 U. S. C., Section 1404(a), so as to repudiate the forum non conveniens doctrine, is believed to have decided an important question of federal law which has not been, but should be settled by this court.

The new Judicial Code became effective on September 1, 1948. Section 1404(a) of the Code, a wholly new provision, authorized a change of venue "(f)or the convenience of parties and witnesses, in the interest of justice * * *" So broad is this language that the Reviser's Notes assume a peculiar importance in its interpretation, as this Court has already found in *Ex parte Collett*, 337 U. S. 55 (1949). Turning to these notes, we learn that Section 1404(a) was "drafted in accordance with the doctrine of *forum non conveniens* * * *," a doctrine for which there had previously been no federal statutory basis. We learn further that *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44 (1941), represents an example of the need for this provision of the Code. Consulting this case, we find that plaintiff's choice of forum there was actually vexatious. Finally, the Reviser avers: "The new subsection requires the court to determine that the transfer is *necessary* for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so" (Italics added).

Nothing in the Reviser's Notes indicates an intention of departing from the *forum non conveniens* doctrine. On the contrary, everything points to a desire to incorporate this doctrine, heretofore wholly judicial, into the Code.

In searching for the mechanics of this doctrine as it existed when the Code was drafted, we are led to *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501 (1947) which laid down the following considerations for the court in applying the doctrine (330 U. S. 501, 508, 511):

(a) The "private interest of the litigant";

(b) "The relative ease of access to sources of proof";

(c) "availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses";

(d) "possibility of view of premises, if view would be appropriate to the action"; and

(e) all other practical problems that make trial of a case easy, expeditious and inexpensive."

Most significantly, the Court concluded this section of its opinion with the words:

> "But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."

The foregoing, it is earnestly submitted, represents the whole basic framework of law upon which a transfer order under Section 1404(a) must be built. In the present case, had the *Gulf* standards been applied, no transfer order could have resulted. These standards were not applied, however, because the District Judge was erroneously convinced that they did not govern the practice in the Fifth Circuit (R. 478, 517, 527, 611, 617).

The present case, grievous as the result has been to petitioners, is merely symptomatic of a much larger problem, of great importance in the administration of the new Judicial Code. Section 1404(a) has been in constant use

since its inception. As demonstrated in Appendix D, no less than 108 reported contested cases dealing with this section have been decided by the district courts. As to the interpretation of the statute, however, the cases are in hopeless confusion, and are capable of reasonable classification only into two groups: those which apply the *forum non conveniens* doctrine as recapitulated in the *Gilbert* case (Appendix E), and those which reject *forum non conveniens*, but fail to replace it with any comprehensible standards (Appendix F). This basic conflict in principle is summed up in *Wiren* v. *Laws*, (D. C. Cir., 1951) 194 F. 2d 873, following *forum non conveniens* and emphasizing particularly the presumption in favor of plaintiff's choice of forum, and *All States Freight, Inc.*, v. *Modarelli*, (3 Cir., May 8, 1952) ..... F. 2d ....., expressly repudiating *forum non conveniens* and the *Gilbert* case.

The situation is aggravated by the wording of the statute itself, since the broad sweep of its language "in the interest of justice" is the ultimate generalization known to the law and leaves room for all types of contradictory and unpredictable results. If, as petitioners contend, the statute imposes the principles of the common law doctrine, the standards are reasonably well known and may be taken into account by the plaintiff when he files his suit, allowing him to select his forum with reasonable assurance of the consequences of his selection. On the other hand, if transfer be regarded as so much less drastic than dismissal as of old that completely new standards are indicated, then these new standards ought in the interest of judicial administration to be defined for the guidance of the trial courts.

2. The decision of the Court of Appeals below, in denying petitioners any review on the merits, has decided an important question of federal law which has not been, but should be settled by this court.

The Court of Appeals below rejected plaintiffs' contention that the transfer order should be held appealable under the rule of *Cohen* v. *Beneficial Industrial Loan Corporation*, 337 U. S. 541 (1949). In that case, an order denying defendant's motion to require the plaintiff to furnish security was held appealable before final judgment, because it was "a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it." Jackson, J. (pp. 546-547). In *Swift & Co.* v. *Compania Colombiana del Caribe*, 339 U. S. 684 (1950), this Court reaffirmed the Cohen doctrine, applying it to an order vacating an attachment and based primarily upon the doctrine of *forum non conveniens*.

A very recent application of the *Cohen* doctrine by this Court is found in *Stack* v. *Boyle*, 342 U. S. 25 (1951), 96 L. Ed. 7, where a denial of a motion to reduce excessive bail was held to be appealable under 28 U. S. C., Sec. 1291, and the *Cohen* case. In a separate opinion, concurring on this point and joined by Mr. Justice Frankfurter, Mr. Justice Jackson pointed out (96 L. Ed., at p. 14) that it is a final *decision* that Congress has made reviewable under Sec. 1291, as distinguished from a final judgment. He went on to state (96 L. Ed., at p. 14):

> "While a final judgment always is a final decision, there are instances in which a final decision is not a final judgment. The purpose of the finality requirement is to avoid piecemeal disposition of the basic controversy in a single case 'where the result of review will be "to halt in the orderly progress of a cause and consider incidentally a question which has happened to

cross the path of such litigation * * *" ' *Cobbledick* v. *United States*, 309 U. S. 323, 326, 84 L. Ed. 783, 785, 60 S. Ct. 540. *But an order fixing bail can be reviewed without halting the main trial—its issues are entirely independent of the issues to be tried—and unless it can be reviewed before sentence, it never can be reviewed at all.* The relation of an order fixing bail to final judgment in a criminal case is analogous to an order determining the right to security in a civil proceeding, *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 93 L. Ed. 1528, 69 S. Ct. 1221, or other interlocutory orders reviewable under 28 U. S. C., Sec. 1292. I would hold, therefore, that such orders are appealable" (Italics added).

Every consideration mentioned by Mr. Justice Jackson is apposite here, and some with stronger reason. The transfer order is a final *decision*, which can be reviewed without halting trial,[1] its issues are independent of the main case, and if not reviewed before *trial*, rather than before *judgment*, it can never be reviewed at all.

While this Court has thus been reaffirming and extending the *Cohen* doctrine, four Courts of Appeals have specifically rejected it as inapplicable to transfer orders: *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329, 330 (2 Cir., 1950); *Paramount Pictures* v. *Rodney*, 186 F. 2d 111, 112 (3 Cir., 1951); *Shapiro* v. *Bonanza Hotel Co.*, 185 F. 2d 777, 779 (9 Cir., 1950); *Clinton Foods* v. *United States*, 188 F. 2d 289, 292 (4 Cir., 1951). In not one of these cases is there a single shred of analysis, or any consideration of the later *Cohen* doctrine cases.

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[1]Motions for transfer, of their nature, usually are made and disposed of early in the litigation. As an example, the present case is still in its discovery phase, although the present uncertain state of the reviewability of orders under Sec. 1404(a) has prolonged the period of seeking review far beyond normal.

As an alternative, plaintiffs urged the Fifth Circuit to treat the appeal as a petition for extraordinary relief, and consider the merits, in accordance with *Magnetic Engineering and Mfg. Co.* v. *Dings*, 178 F. 2d 866 (2 Cir., 1950), and *Shapiro* v. *Bonanza Hotel Co.*, 185 F. 2d 777 (9 Cir., 1950). This the Fifth Circuit declined to do, and the only suggestion of a reason is contained in one sentence of its opinion where it states, referring to its previous order denying plaintiffs' motion for leave to file a petition for mandamus:

> "Implicit in this order is the finding that the District Judge did not abuse his discretion."

But this statement is certainly error, since the mere denial of a motion for leave to file a petition for mandamus does not prejudice petitioner's right to seek the same relief at a later time. *Roberts* v. *U. S. District Court*, 339 U. S. 844 (1950).

Plainly, petitioners have had no review, or color of review, on the merits of the transfer order, and the Fifth Circuit has therefore held that an erroneous transfer is not reviewable at all. This ruling presents defendants in any type of federal litigation with a new and powerful affirmative weapon to which there can be no defense. No matter how carefully he selects his forum, or how much attention he gives to the convenience of all concerned in the litigation, a plaintiff has no assurance that he will not be the victim of an arbitrary order of transfer to a forum having no contact with his case, and where he cannot attempt to enforce his rights with any hope of success. Further, when a plaintiff selects a forum, he exposes himself to any counterclaim which can be brought against him, and waives any objection he might otherwise have to venue on that counterclaim, *General Electric Co.* v. *Marvel Rare Metals Co.*, 287 U. S. 430 (1932). But under an unsupervised Sec-

tion 1404(a), a statute intended to protect defendants from vexatious forums, these same defendants may now effectuate a transfer of the entire action, including counterclaims, to a forum vexatious to the plaintiff and force him to make his defense there, thus completely reversing the plain policy of the statute. This is precisely what has happened in the present case, the plaintiff R. E. Crummer & Company being faced with a counterclaim seeking $6,000,000 in damages (R. 362, 540), which is now asserted against it in a district not available to the counterclaimants but for the erroneous transfer order which has been denied review.

At the hearing on the new Judicial Code before Sub-Committee No. 1 of the House Judiciary Committee, Professor James W. Moore, author of Moore's Federal Practice and a consultant on the Code, stated that Sections 1404 and 1406 were changes "in line with modern state practice." United States Code Congressional Service, *New Title 28, United States Code,* (1948), page 1969. This Court has already referred to state practice as helpful in interpreting Section 1404(a).[1]

An examination of nineteen state statutes and the similarity of those statutes to each other and in turn to the language of 1404(a) leaves no doubt that the draftsmen did in fact refer to those state statutes. Fourteen of the nineteen states authorize a change of venue in the following verbatim language:

> "The convenience of witnesses and the ends of justice would be promoted by the change."

Four others are almost identical (See Appendix G).

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[1]*Ex parte Collett,* 337 U. S. 55, 60, N. 10 (1949).

Furthermore, our investigation of this modern state practice shows that in each case the state has so controlled the operation of its statute that an order made thereunder is either (1) an interlocutory appealable order, or (2) established practice makes such an order reviewable by mandamus or other extraordinary writ. Illustrative decisions are set forth in Appendix G. Thus a federal statute passed by Congress upon the express representation that it was to follow the state statutes as interpreted by the court should be given a similar construction and some means of review be provided.

We believe that the previous experience of other jurisdictions in this field has led them to conclude that it is judicially and administratively unsound to permit indiscriminate disturbance of statutory venue without some reasonable surveillance by appellate courts. This is doubly true during the early periods following enactment of a transfer statute before standards for determining a transfer motion on the merits have been settled authoritatively. The matter is all the more intolerable in the federal courts. With federal forums provided in every one of our states and territories, some of them thousands of miles distant from others, the ultimate place of trial may well be the decisive factor as to whether or not any particular lawsuit should be brought at all.

Finally, every United States Court of Appeals which has considered the subject has held that some form of review is available, with the exception of the Fifth Circuit, in the present case, and the Third Circuit in *All States Freight, Inc.*, v. *Modarelli*, ____ F. 2d ____ (1952).

Petitioners earnestly contend that while appeal, under the *Cohen* doctrine as extended, is the preferable method of review, since it eliminates the objections to extraordi-

nary writs outlined in *Ex parte Fahey*, 332 U. S. 258 (1947), the more important question is whether review is available at all, and the answer can only be in the affirmative.

3. The decision of the Court of Appeals below in sanctioning an order rejecting forum non conveniens and according it no review on the merits, is believed to conflict in principle with the decision of the Court of Appeals for the District of Columbia in Wiren v. Laws, 194 F. 2d 873 (Dec. 27, 1951).

In *Wiren* v. *Laws*, 194 F. 2d 873 (D. C. Cir., 1951), an erroneous transfer order was set aside by mandamus. The Court adhered to the principles of *Gulf Oil* v. *Gilbert, supra,* and on this point also cited and quoted from *Ford Motor Co.* v. *Ryan*, 182 F. 2d 329 (2 Cir., 1950), particularly emphasizing the weight to be given the plaintiff's choice of forum. Further, in holding that mandamus was appropriate, the Court in the *Wire* case stated:

> "If we were to hold even unauthorized orders of transfer to be beyond our control, the effect would be to deprive litigants of forums to which they are entitled." *Bazelon, C. J.*, 194 F. 2d 873, 874.

On these two points, *i. e.*, the applicability of *forum non conveniens* and the reviewability of an erroneous transfer order, the Fifth Circuit in the present case was directly opposed to the *Wiren* case, but was in direct accord, in principle, with the case of *Modarelli* v. *All States Freight, Inc.*, ____ F. 2d ____ (3 Cir., May 8, 1952).

The *Modarelli* case specifically rejects *forum non conveniens* as expressed in *Gulf* v. *Gilbert, supra,* and in *Koster* v. *Lumbermen's Mutual Casualty Co.*, 330 U. S. 518 (1947), after stating that "some district judges are applying Section 1404(a) with a limitation imposed by the Supreme Court upon the doctrine of *forum non conveniens* as

found in" the *Gulf and Koster* cases. A comparison of Appendices E and F, infra, pp. 45 and 49, demonstrates that far more district courts have applied *forum non conveniens* under 1404(a) than not, and that the recent trend in the district courts is overwhelmingly in favor of the doctrine.

On the second point, the Third Circuit in the *Modarelli* case held that a transfer order is absolutely non-reviewable so long as the district judge has *considered* the "interests stipulated in the statute and decided thereon." In support of this holding, the Court states:

> "Every litigant against whom the transfer issue is decided naturally thinks the judge was wrong. It is likely that in some cases an appellate court would think so, too. But the risk of a party being injured either by the granting or refusal of a transfer order is, we think, much less than the certainty of harm through delay and additional expense if these orders are to be subjected to interlocutory review by mandamus." Goodrich, C. J.

Later in its opinion, the court definitely recognizes a conflict between the circuits on the issue of reviewability,[1] stating:

> "We realize that the view we express is not the one which some of our judicial brethren are following

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[1]After observing that it is possible to obtain review in the Second Circuit, but impossible in the Third under the *Modarelli* case and *Gulf Research* v. *Leahy*, 193 F. 2d 302 (1952), *cert. granted* 20 U. S. L. Week 3273, a writer recently stated:

> "Unless the Supreme Court in the cases now before it rules on these and appealability questions involving transfer orders, we will have a situation where a lawyer in one circuit can have the order reviewed by writ, while a lawyer in another circuit cannot." Keefe, *Venue and Removal Jokers in the New Federal Judicial Code*, 38 Va. L. Rev. 569, 574-575 (1952).

with regard to this statute" (Citing, among others, *Wiren* v. *Laws, supra,* 194 F. 2d 873 (D. C. Cir., 1951)).

The principle of the *Modarelli* case, identical with the holding of the Fifth Circuit in the present case, and in accord with the previous holding of the Third Circuit in *Gulf Research & Development Co.* v. *Leahy,* 193 F. 2d 302 (1952); *cert. granted* 20 U. S. L. Week 3273 (U. S., April 22, 1952), gives the district courts carte blanche to decline jurisdiction of cases at will, so long as they pay lip service to the "convenience of parties and witnesses, in the interest of justice," a vague, formless and indeterminate series of words. This is an abdication of appellate supervision which can enable a district judge to present defendants with a complete defense by transferring the action to a venue where the plaintiff cannot afford to litigate, leaving the plaintiff with no recourse in the courts no matter how meritorious his case may be. The Third Circuit suggests that it will save time to let these errors remain forever uncorrected. The principal expenditure of time by litigants under the statute to date has been caused by the uncertain and confusing state of the law to which petitioners have referred, and which petitioners here seek to have clarified.

Petitioners therefore respectfully submit that the *Wiren* case is correct in principle and that both the present decision of the Fifth Circuit and the *Modarelli* case, with which it is in accord, are wrong and should be set aside.

CONCLUSION.

For the foregoing reasons, this Court should exercise its power to issue a writ of certiorari or to grant petitioners such other relief as may be just and proper in the premises, with a view to settling the important questions presented and correcting the manifest error inherent in the transfer which necessitated these proceedings.

Respectfully submitted,

ROBERT J. PLEUS,
CHRIS DIXIE,
JOSEPH P. LEA, JR.,
Counsel for Petitioners.

APPENDIX A.

1. Title 28, U. S. C., Sec. 1404(a):

Change of Venue.

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

2. Title 15, U. S. C., Sec. 15:

Suits by persons injured; amount of recovery.

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit; including a reasonable attorney's fee (Oct. 15, 1914, Ch. 323, Sec. 4, 38 Stat. 731)."

3. Title 15, U. S. C., Sec. 22:

District in which to sue corporation.

"Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. (Oct. 15, 1941, Ch. 323, Sec. 12, 38 Stat. 736)."

4. Section 92.12, Florida Statutes, 1951:

Copies of evidence of records of public officers in gen-

"In all cases where *any record,* pleading, document, deed, conveyance, paper or instrument of writing is, or may be, required or authorized to be made or *filed or recorded in any public office* of this state or of any county thereof, *a copy thereof, duly certified* under the hand and seal of office (if there be seal of office, and if there be no seal of office, then under the private seal of the officer having the custody or control of the same), to be a true and correct copy of the original, on file or of record in his office, *shall in all cases* and in all courts and places *be admitted and received in evidence* with the like force and effect *as the original thereof might be.* Nothing herein contained shall be so construed as to prevent any court or judge before whom such copies may be offered in evidence from requiring the party offering the same to produce or account for the original of such copy, if the same shall be deemed necessary or proper for the attainment of justice" (Emphasis added).

5. Rule 43, Federal Rules of Civil Procedure:

Evidence.

"43.(a) *Form and Admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or the rules of evidence heretofore applied in the courts of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, *or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of evidence governs* and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner" (Emphasis added).

APPENDIX B.

(A) Parties	(B) Residence	(C) Distance to Orlando	(D) Distance to Tallahassee	(E) Additional Distance Round Trip to Tallahassee	(F) Amenable to Trial Witness Subpoena from Orlando	(G) Amenable to Trial Witness Subpoena from Tallahassee
Plaintiffs						
R. E. Crummer & Co.	Orlando-S[1]	0	252	504	Yes	No
The Crummer Company	Orlando-S	0	252	504	Yes	No
Defendants						
Loomis C. Leedy	Orlando-S	0	252	504	Yes	No
Leedy, Wheeler & Alleman, Inc.	Orlando-S	0	252	504	Yes	No
Paul L. Pierce	Orlando-S	0	252	504	Yes	No
Howard S. Wheeler	Orlando-S	0	252	504	Yes	No
W. Wallace Shafer	Lakeland-S	63	253	380	Yes	No
Walter R. Gall	Zephyrhills-S	79	234	310	Yes	No
Walter P. Fuller	St. Petersburg-S	117	261	288	Yes	No
Ernest J. Mansfield	St. Petersburg-S	117	261	288	Yes	No
Archie Clement	Tarpon Springs-S	129	225	192	Yes	No
Cummer Sons Cypress Company	Jacksonville-S	148	169	42	Yes	No
Jessie Ball duPont[2]	Jacksonville-S	148	169	42	Yes	No
Fla. Nat'l Bank, Jax.	Jacksonville-S	148	169	42	Yes	No
Roger L. Main	Jacksonville-S	148	169	42	Yes	No
Clyde C. Pierce	Jacksonville-S	148	169	42	Yes	No
Clyde C. Pierce Corp.	Jacksonville-S	148	169	42	Yes	No
Edward Ball[2]	Tallahassee[3]-N	252	0	—504	Yes	Yes
St. Joe Paper Co.	Port St. Joe[4]-N	351	99	—504	Yes	Yes
				4734		
				—1008		
Total Round Trip Differential All Florida Parties				3734		

Average Additional Round Trip Milage to Tallahassee for Each Party ____ 196
Average Round Trip for Defendants to Tallahassee ____ 394
Average Round Trip for Defendants to Orlando ____ 234

WITNESSES IDENTIFIED BY NAME[5]

W. J. Noel	Orlando-S	0	252	504	Yes	No
E. L. Mickle	Orlando-S	0	252	504	Yes	No
J. P. Lea, Jr.	Orlando-S	0	252	504	Yes	No
W. J. Meredith	Orlando-S	0	252	504	Yes	No
H. A. Lasseter	Kissimmee-S	18	270	504	Yes	No
Edward Ball	Tallahassee-N	252[2]	0	—504	Yes	Yes
Clyde C. Pierce	Jacksonville-S	148	169	42	Yes	No
Frank Taylor	Jacksonville-S	148	169	42	Yes	No

[1]Letters "S" and "N" indicate respectively Southern and Northern Districts of Florida.

[2]Sued individually and as Trustee of the Alfred I. duPont Testamentary Trust, which is domiciled at Jacksonville.

[3]Business address, attorneys, and office at Barnett National Bank Building, Jacksonville.

[4]Principal Officers, Offices, Resident Agent, and records at Jacksonville (R. 587).

[5](R. 358-359; 367, 577.)

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APPENDIX C.

I. The following cases hold that the condition of the docket should be given little or no consideration in a motion to transfer under 28 U. S. C. 1404 (a):

United States v. *National City Lines*, 80 Fed. Supp. 734, 743 (S. D. Cal., 1948).

Brown v. *Insurograph*, 85 Fed. Supp. 328, 329 (D. Del., 1949).

Naughton v. *Pennsylvania Ry.*, 85 Fed. Supp. 761, 762 (E. D. Pa., 1949).

Barnhart v. *John B. Rogers Producing Co.*, 86 Fed. Supp. 598, 599 (S. D. N. Y., 1950).

United States v. *Scott & Williams, Inc.*, 88 Fed. Supp. 531, 535 (S. D. N. Y., 1950).

Keller-Dorian Colorfilm Corp. v. *Eastman Kodak*, 88 Fed. Supp. 863, 866 (S. D. N. Y., 1949).

Ferguson v. *Ford Motor Co.*, 89 Fed. Supp. 45, 55 (S. D. N. Y., 1950).

Glasfloss Corp. v. *Owens-Corning Fiberglas Corp.*, 90 Fed. Supp. 967, 969, 970 (S. D. N. Y., 1950).

Automatic Washer Co. v. *Easy Washing Machine Corp.*, 91 Fed. Supp. 894, 895 (N. D. N. Y., 1950).

Henderson v. *American Airlines*, 91 Fed. Supp. 191, 192 (S. D. N. Y., 1950).

Aircraft Marine Products v. *Burndy Engineering Co.*, 96 Fed. Supp. 588, 593 (S. D. Cal., 1951).

II. The following cases give the condition of the ocket some consideration on a 1404 (a) motion, but are istinguishable as cases where the original forum had no eal connection with the case:

Levenson v. *Little*, 81 Fed. Supp. 513, 517 (S. D. N. Y., 1949).

United States v. *E. I. duPont de Nemours & Co.*, 83 Fed. Supp. 233, 235 (D. D. C., 1949).

Magnetic Engineering & Mfg. Co. v. *Dings Magnetic Separator Co.*, 86 Fed. Supp. 13, 17 (S. D. N. Y., 1949).

Healy v. *New York, etc., Ry.*, 89 Fed. Supp. 614, 618, 619 (S. D. N. Y., 1949).

Maloney v. *New York, etc., Ry.*, 88 Fed. Supp. 568, 572 (S. D. N. Y., 1949).

Hansen v. *Nash-Finch Co.*, 89 Fed. Supp. 108, 109 (D. Minn., 1950).

Walsh v. *Pullman*, 89 Fed. Supp. 762, 764 (S. D. N. Y., 1949).

Nagle v. *Pennsylvania Ry.*, 89 Fed. Supp. 822, 823 (N. D. Ohio, 1950).

Mazula v. *Delaware & Hudson Ry.*, 90 Fed. Supp. 966, 967 (S. D. N. Y., 1950).

Kasper v. *Union Pacific Ry.*, 97 Fed. Supp. 275, 276 (E. D. Pa., 1951).

APPENDIX D.

District Court Cases Dealing with Section 1404(a).

Hayes v. *Chicago, R. I. & P. R. Co.*, (D. Minn. 4th Div., 1948) 79 Fed. Supp. 821, Nordbye & Joyce.

White v. *Thompson*, 80 Fed. Supp. 411 (N. D. Ill. E. Div., 1948), Barnes.

U. S. v. *National City Lines, Inc., et al.*, 80 Fed. Supp. 734 (S. D. Cal. Central Div., 1948), Yankwich.

Baltimore & Ohio R. Co. v. *Kepner*, 80 Fed. Supp. 738 (1941, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28).

Nunn v. *Chicago, Milwaukee, St. P. & P. R. Co.*, 80 Fed. Supp. 745 (S. D. N. Y., 1948), Kaufman.

Chaffin v. *Chesapeake & O. Ry. Co.*, 80 Fed. Supp. 957 (E. D. N. Y., 1948), Galston.

Richer v. *Chicago, R. I. & P. R. Co.*, 80 Fed. Supp. 971 (E. D. Missouri E. Div., 1948), Hulen.

Pascarella v. *N. Y. Cent. R. Co.*, 81 Fed. Supp. 95 (E. D. N. Y., 1948), Rayfiel.

Brainard v. *Atchison, T. & S. F. Ry. Co.*, 81 Fed. Supp. 211 (N. D. Ill. E. Div., 1948), Campbell.

Levenson (*Spielberger et al., Intervenors*) v. *Little et al.*, 81 Fed. Supp. 513 (S. D. N. Y. Civil Div., 1949), Ryan.

Johnson v. *Baker et al.*, 81 Fed. Supp. 563 (S. D. N. Y., 1948), Kaufman.

Scott v. *N. Y. Cent. R. Co.*, 81 Fed. Supp. 815 (N. D. Ill. E. Div., 1948), Barnes.

Bolton v. *General Motors Corp.*, 81 Fed. Supp. 851 (N. D. Ill. E. Div., 1949), Campbell.

Perry v. *Atchison, T. & S. F. Ry. Co.*, 82 Fed. Supp. 913 (N. D. Cal. S. Div., 1948), Goodman.

U. S. v. *E. I. duPont de Nemours & Co.*, 83 Fed. Supp. 233 (Dist. of Columbia, 1949), Holtzoff.

Cullinan v. *N. Y. Cent. R. Co.*, 83 Fed. Supp. 870 (S. D. New York, 1948), Hulbert.

Auburn Capitol Theatre Corp. et al., v. *Schine Chain Theatres, Inc., et al.*, 83 Fed. Supp. 872 (S. D. New York Civil Div., 1949), Ryan.

Banachowski v. *Atlantic Refining Co.*, 84 Fed. Supp. 444 (S. D. N. Y., 1949), Ryan.

Republiquie Francaise v. *M., K. & T. Ry. Co., of Texas*, 85 Fed. Supp. 295 (N. D. Texas, Dallas Div., 1949), Atwell.

Republiquie Francaise v. *Gulf, Colorado & Santa Fe Ry. Co.*

Cinema Amusements, Inc., v. *Loew's, Inc., et al.*, 85 Fed. Supp. 319 (D. Delaware, 1949), Rodney.

Brown et al. v. *Insurograph, Inc.*, 85 Fed. Supp. 328 (U. S. D. C. D. Delaware, 1949), Rodney.

Greve v. *Gibraltar Enterprises, Inc.*, 85 Fed. Supp. 410 (D. New Mexico, 1949) Hatch.

Naughton v. *Pennsylvania R. Co. & Nine Other Cases*, 85 Fed. Supp. 761 (E. D. Pennsylvania, 1949), Kirkpatrick.

Magnetic Engineering & Mfg. Co. v. *Dings Magnetic Separator Co.*, 86 Fed. Supp. 13 (S. D. New York, 1949), Hulbert.

U. S. v. *Gerber et al.*, 86 Fed. Supp. 175 (E. D. Pennsylvania, 1949), Bard.

U. S. v. *Briggs Mfg. Co. et al.*, 86 Fed. Supp. 178 (E. D. Pennsylvania, 1949), Bard.

Barnhart et al. v. *John B. Rogers Producing Co.*, 86 Fed. Supp. 595 (N. D. Ohio, W. Div., 1949), Kloeb.

U. S. v. *23 Gross Jars, More or Less of Enca Cream et al.*, (N. D. Ohio, E. Div., 1949), 86 Fed. Supp. 824, Jones.

White v. *Employers' Liability Assur. Corp., Ltd. (Lamb, Third-Party Defendant)*, 86 Fed. Supp. 910 (E. D. South Carolina, Columbia Div., 1949), Wyche.

Apex Electrical Mfg. Co. v. *Sears, Roebuck & Co.*, 87 Fed. Supp. 533 (S. D. Ohio, W. Div., 1949), Nevin.

Brainard v. *Atchison, Topeka & Santa Fe Ry. Co.*, 87 Fed. Supp. 921 (D. Kansas, 1950), Mellott.

Pan American Airways, Inc., v. *Consolidated Vultee Aircraft Corp. et al.*, (87 Fed. Supp. 926), (S. D. New York, 1949), Noonan.

U. S. v. *E. I. duPont deNemours & Co. et al.*, 87 Fed. Supp. 962 (N. D. Ill., E. Div, 1950) LaBuy.

Doyle v. *Southern Pac. Co.*, 87 Fed. Supp. 975 (E. D. Missouri, E. D., 1949), Hulen.

Conley v. *Pennsylvania R. Co.*, 87 Fed. Supp. 980, (S. D. N. Y., 1950), Irving R. Kaufman.

U. S. v. *Scott & Williams, Inc., et al.*, 88 Fed. Supp. 531 (S. D. N. Y., 1950), Irving R. Kaufman.

Lucas v. *N. Y. Central R. Co.*, 88 Fed. Supp. 536 (S. D. N. Y., 1950), Irving R. Kaufman.

Maloney v. *New York, N. H. & H. R. Co.*, 88 Fed. Supp. 568 (S. D. N. Y., 1949), Noonan.

Belair v. *New York, N. H. & H. R. Co.*, 88 Fed. Supp. 572 (S. D. N. Y., 1950), Irving R. Kaufman.

Huff v. *Nashville, Chattanooga & St. Louis Ry.*, 88 Fed. Supp. 735 (S. D. N. Y., 1949), Rifkind.

Keller-Dorian Colorfilm Corp. v. *Eastman Kodak Co.*, 88 Fed. Supp. 863 (S. D. N. Y., 1949), Ryan.

Keller-Dorian Colorfilm Corp. v. *Eastman Kodak Co. et al.*

Ferguson et al. v. *Ford Motor Co. et al.*, 89 Fed. Supp. 45 (S. D. N. Y., 1950), Appeal Dismissed May 8, 1950—See F. 2d 329, Ryan.

Otto v. *Hirl et al.*, 89 Fed. Supp. 72 (S. D. Iowa, Davenport Div., 1950), Switzer.

Hansen v. *Nash-Vinch Co.*, 89 Fed. Supp. 108 (D. Minn., 4th Div., 1950), Nordbye.

Bounds v. *Strekfus Steamers, Inc.*, 89 Fed. Supp. 242 (D. Delaware, 1950), Rodney.

Tivoli Realty, Inc. v. *Paramount Pictures et al.*, 89 Fed. Supp. 278 (D. Del., 1950), Rodney.

Adelman v. *Paramount Pictures Inc., et al.*

Healy v. *New York, New Haven & Hartford R. Co., et al.*, 89 Fed. Supp. 614 (S. D. N. Y., 1949), Ryan.

McCarley v. *Foster-Milburn Co. et al.*, 89 Fed. Supp. 643 (W. D. New York, 1950), Knight.

Walsh et al. v. *Pullman Co. et al.*, 89 Fed. Supp. 762 (S. D. N. Y., 1949), Leibell.

Nagle v. *Pennsylvania R. Co.*, 89 Fed. Supp. 822 (N. D. Ohio E. Div., 1950), Jones.

Spence v. *Norfolk & W. Ry. Co.*, 89 Fed. Supp. 823 (N. D. Ohio E. Div., 1950), Freed.

Wookey v. *Waterman S. S. Corp.*, 89 Fed. Supp. 909 (S. D. N. Y., 1950), McGohey.

Scarmardo v. *Mooring et al.*, 89 Fed. Supp. 936 (S. D. Texas, Houston Div., 1950), Kennerly.

Tisa et al. v. *Potofsky et al.*, 90 Fed. Supp. 175 (S. D. N. Y., 1950), Rifkind.

Smith v. *Louisville & N. R. Co.*, 90 Fed. Supp. 189 (S. D. N. Y., 1950), Kaufman.

Hawks v. *Maryland & Pennsylvania R. Co. et al.*, 90 Fed. Supp. 284 (E. D. Pa., 1950), Bard.

Hampton Theatres, Inc., v. *Paramount Film Distributing Corp. et al.*, 90 Fed. Supp. 645 (Dist. of Columbia, 1950), Tamm.

Nachtman v. *Jones & Laughlin Steel Corp.*, 90 Fed. Supp. 739 (Dist. of Columbia, 1950), Tamm.

Masterpiece Productions, Inc., et al. v. *United Artists Corp.*, 90 Fed. Supp. 750 (E. D. Pa., 1950), McGranery.

Mazula v. *Delaware & Hudson R. Corp.*, 90 Fed. Supp. 966 (S. D. N. Y., 1950), Conger.

Glasfloss Corp. v. *Owens-Corning Fiberglas Corp. et al.*, 90 Fed Supp. 967 (S. D. N. Y., 1950), Conger.

Lewis et al. v. *American Airlines, Inc.*, 91 Fed. Supp. 31 (S. D. N. Y., 1950), Conger.

Skultety v. *Pa. R. Co.*, 91 Fed. Supp. 119 (S. D. N. Y., 1950), Irving R. Kaufman.

Henderson v. *American Airlines, Inc., et al.*, 91 Fed. Supp. 191 (S. D. N. Y., 1950), Irving R. Kaufman.

Nyles v. *American Airlines, Inc., et al.*

Latimer v. *S/A Industrias Reunidas F. Matarazzo*, 91 Fed. Supp. 469 (S. D. N. Y., 1950), Noonan.

Koons et al. v. *Kaiser et al.*, 91 Fed. Supp. 511 (S. D. N. Y., 1950) (1406), Irving Kaufman.

Automatic Washer Co. v. *Easy Washing Machine Corp.*, 91 Fed. Supp. 894 (N. D. N. Y., 1950), Brennan.

Stewart v. *Atchison T. & S. F. Ry. Co.*, 92 Fed. Supp. 172 (E. D. Missouri E. Div., 1949), Hulen.

Beiersdorf & Co., Inc., v. *Duke Laboratories, Inc.*, 92 Fed. Supp. 287 (S. D. N. Y., 1950), McGohey.

Adler v. *McKee*, (S. D. N. Y., 1950) 92 Fed. Supp. 613, Noonan.

Buffington v. *Vulcan Furniture Mfg. Corp.*, 94 Fed. Supp. 13 (W. D. Ark., El Dorado Div., 1950), John E. Miller.

St. Paul Fire & Marine Ins. Co. v. *American Mail Line, Limited*, 94 Fed. Supp. 28 (S. D. N. Y., 1950), Goddard.

Crawford v. *Ann Arbor R. Co.*, 94 Fed. Supp. 29 (S. D. N. Y., 1950), Goddard.

Masterpiece Productions, Inc., et al. v. *United Artists Corp.*, 94 Fed. Supp. 116 (E. D. Pa. 1950), McGranery.

U. S. v. *11 Cases, More or Less, Ido-Pheno-Chon et al.*, 94 Fed. Supp. 925 (D. Oregon, 1950), Fee, James Alger.

Kirk v. *Spur Distributing Co., Inc.*, 95 Fed. Supp. 428 (D. Delaware, 1950), Rodney.

Kostamo v. *Brorby et al.*, (two cases) 95 Fed. Supp. 806 (D. Neb., Omaha Div., 1951), Donohoe.

Tankel et al. v. *Seiberling Rubber Co. et al.*, 95 Fed. Supp. 987 (N. D. Calif., S. Div., 1951), Harris.

LeMee v. *Streckful Steamers, Inc.*, 96 Fed. Supp. 270 (E. D. Missouri, E. Div., 1951), Hulen.

Mason v. *Chicago R. I. & Pacific R. Co.*, 96 Fed. Supp. 361 (W. D. Missouri, W. Div., 1951), Reeves.

Mincy v. *Detroit & Cleveland Nav. Co.*, 96 Fed. Supp. 505 (S. D. N. Y., 1950), Ryan.

Aircraft Marine Products, Inc., v. *Burndy Engineering Co.*, 96 Fed. Supp. 588 (S. D. Cal., Central Div., 1951), Byrne.

Nicol v. *J. C. Penney Co.*, 97 Fed. Supp. 83 (E. D. Mich, S. Div., 1951), Koscinski.

Kasper et al. v. *Union Pac. R. Co.*, 97 Fed. Supp. 275 (E. D. Pa., 1951), McGranery.

Dolly Toy Co. v. *Bancroft Rellim Corp.*, 97 Fed. Supp. 531 (S. D. N. Y., 1951), Irving R. Kaufman.

Alltmont v. *U. S. et al.*, 98 Fed. Supp. 309 (E. D. Pa., 1951), Kirkpatrick.

Herzog v. *Central Steel Tube Co.*, 98 Fed. Supp. 607 (S. D. Iowa, Davenport Div., 1951), Riley.

Mazinski et al. v. *Dight*, 99 Fed. Supp. 192 (W. D. Pa., 1951), Marsh.

Webster-Chicago Corp. v. *Minneapolis-Honneywell Regulator Co.*, 99 Fed. Supp. 503 (D. Delaware, 1951), Rodney.

Burns v. *Chubb*, 99 Fed. Supp. 581 (E. D. Pa., 1951), Welsh.

Goodman v. *Southern Ry. Co.*, 99 Fed. Supp. 852 (S. D. N. Y., 1951), Irving R. Kaufman.

James v. *American Pac. S. S. Co.*, 99 Fed. Supp. 1016 (S. D. N. Y., 1951), S. H. Kaufman.

Federal Electric Products Co. v. *Frank Adam Electric Co.*, 100 Fed. Supp. 8 (S. D. N. Y., 1951), Irving R. Kaufman.

Wilson v. *Kansas City Southern Ry. Co.*, 101 Fed. Supp. 56 (W. D. Missouri W. Div., 1951), Ridge.

Lehman et al. v. *Napier et al.*, 101 Fed. Supp. 313 (S. D. Iowa Central Div., 1951), Riley.

Arrowhead Co. Inc., et al., v. *The Aimee Lykes et al.*, 101 Fed. Supp. 896 (S. D. N. Y., 1950), Noonan.

Ortiz v. *Union Oil Co. of California*, 102 Fed. Supp. 492 (S. D. N. Y., 1952), Weinfeld.

Reade Shirts, Inc., v. *Commonwealth Ins. Co. of New York*, 102 Fed. Supp 941 (S. D. N. Y., 1952), McGohey.

Anthony v. *R. K. O. Radio Pictures*, 103 Fed. Supp. 56 (S. D. N. Y., 1951), S. H. Kaufman.

Tivoli Realty v. *Paramount Pictures*, 103 Fed Supp. 174 (D. Del., 1951), Rodney.

McDaniel v. *Drotman*, 103 Fed. Supp. 643 (W. D. Ky., 1952), Swinford.

Jerclaydon, Inc., v. *Hosid Products, Inc.*, 104 Fed. Supp. 122 (E. D. N. Y., 1952), Byers.

U. S. v. *Reid*, 104 Fed. Supp. 260 (E. D. Ark., 1952), Lemley.

Jenkins v. *Wilson Frt. Forwarding Co.*, 104 Fed. Supp. 422 (S. D. N. Y., 1952), Irving R. Kaufman.

Lynch v. *Luckenbach S. S. Co.*, 104 Fed. Supp 494 (S. D. N. Y., 1952), Leibell.

Savoia Films S. A. I. v. *Vanguard Films, Inc. et al.*, 10 F. R. D. 65 (S. D. N. Y., 1950) Kaufman, Irv.

Walsh et al. v. *Pullman Co. et al.*, 10 F. R. D. 7 (S. D. N. Y., 1948), Leibell.

Berlin et al. v. *Club 100, Inc.*, 12 F. R. D. 129 (D Massachusetts, 1951), McCarthy.

APPENDIX E.

The following cases cite *Gulf Oil* v. *Gilbert*, as determining the criteria to consider on a motion to transfer under 28 U. S. C. 1404(a), or otherwise hold that a heavy balance of convenience is necessary before a transfer will be made:

Court of Appeals.

Hammett v. *Warner Bros. Pictures*, 176 F. 2d 145 (2d Cir., 1949).

Headrick v. *Atchison, T. & S. F. Ry.*, 182 F. 2d 305, 310 (10th Cir., 1950), Pickett, C. J.

Ford Motor Co. v. *Ryan*, 182 F. 2d 329, 330 (2d Cir., 1950), Frank, C. J.

Nicol v. *Koscinski*, 188 F. 2d 537 (6th Cir., 1951), Simons, J.

Wiren v. *Laws*, *Wiren* v. *Paramount Pictures, Inc.*, 194 F. 2d 873 (D. C. Cir., 1951).

District Courts.

Hayes v. *Chicago, R. I. & P. Ry.*, 79 Fed. Supp. 821, 823 (D. Minn., 1948), Nordbye, J.

Richer v. *Chicago, R. I. & P. Ry.*, 80 Fed. Supp. 971, 972 (E. D. Mo., 1948), Hulen, J.

Johnson v *Baker*, 81 Fed. Supp. 563, 565 (S. D. N. Y., 1948), Kaufman, J.

Cullinan v. *New York Central Ry.*, 83 Fed. Supp. 870, 872 (S. D. N. Y., 1948), Hulbert, J.

Healy v. *N. Y., N. H. & H. R. Co.*, 89 Fed. Supp. 614 (S. D. N. Y., 1949), Ryan, J.

Levenson v. *Little*, 81 Fed. Supp. 513, 514 (S. D N. Y., 1949), Ryan, J.

Auburn Capital Theatre Corp. v. *Schine Chain Theatres*, 83 Fed. Supp. 872, 874 (S. D. N. Y., 1949), Ryan, J.

Naughton v. *Pennsylvania Ry.*, 85 Fed. Supp. 671, 764 (E. D. Pa., 1949), Kirkpatrick, J.

Cinema Amusements v. *Loew's, Inc.*, 85 Fed. Supp. 319, 322 (D. Del., 1949), Rodney, J.

Brown v. *Insurograph, Inc.*, 85 Fed. Supp. 328, 329 (D. Del., 1949), Rodney, J.

Magnetic Engineering & Mfg. Co. v. *Dings Separator Co.*, 86 Fed. Supp. 13, 15 (S. D. N. Y., 1949), Hulbert, J.

Apex Electrical Mfg. Co. v. *Sears, Roebuck & Co.*, 87 Fed. Supp. 533, 534 (S. D. Ohio, 1949), Nevin, J.

Pan American Airways v. *Consolidated Vultee Aircraft*, 87 Fed. Supp. 926, 930 (S. D. N. Y., 1949), Noonan, J.

United States v. *Scott & Williams*, 88 Fed. Supp. 531, 533 (S. D. N. Y., 1950), Irving Kaufman, J.

Lucas v. *New York Central Ry.*, 88 Fed. Supp. 536, 538 (S. D. N. Y., 1950), Irving Kaufman, J.

Savoia Films v. *Vanguard Films*, 10 F. R. D. 64, 67 (S. D. N. Y., 1950), Irving Kaufman, J.

Maloney v. *New York Central Ry.*, 88 Fed. Supp. 568, 570 (D. D. N. Y., 1949), Noonan, J.

Belair v. *New York, N. H. & H. Ry.*, 88 Fed. Supp. 572, 573 (S. D. N. Y., 1950), Irving Kaufman, J.

Ferguson v. *Ford Motor Co.*, 89 Fed. Supp. 45, 50, 51 (S. D. N. Y., 1950), Ryan, J.

Otto v. *Hirl*, 89 Fed. Supp. 72, 73 (S. D. Ia., 1950), Switzer, J.

Hansen v. *Nash-Finch Co.*, 89 Fed. Supp. 108 (D. Minn., 1950), Nordbye, J.

Bounds v. *Streckfus Steamers, Inc.*, 89 Fed. Supp. 242, 243 (D. Del., 1950), Rodney, J.

Walsh v. *Pullman*, 89 Fed. Supp. 762, 764 (S. D. N. Y., 1949), Leibell, J.

Wookey v. *Waterman S. S. Corp.*, 89 Fed. Supp. 909, 910 (S. D. N. Y., 1950), McGohey, J.

Hampton Theatres v. *Paramount Film Distributing Corp.*, 90 Fed. Supp. 645, 647 (D. D. C., 1950), Tamm, J.

Glasfloss Corp. v. *Owens-Corning Fiberglas Corp.*, 90 Fed. Supp. 967, 971 (S. D. N. Y., 1950), Conger, J.

Skultety v. *Pennsylvania Ry.*, 91 Fed. Supp. 118, 119 (S. D. N. Y., 1950), Irving Kaufman, J.

Henderson v. *American Airlines*, 91 Fed. Supp. 191, 192 (S. D. N. Y., 1950), Irving Kaufman, J.

Latimer v. *S/A Industrias Reunidas F. Matarazzo*, 91 Fed. Supp. 469, 470 (S. D. N. Y., 1950), Noonan, J.

Automatic Washer Co. v. *Easy Washing Machine Corp.*, 91 Fed. Supp. 894, 895 (N. D. N. Y., 1950), Brennan, J.

P. Beiersdorf Laboratories v. *Duke Laboratories, Inc.*, 92 Fed. Supp. 287, 288 (S. D. N. .Y, 1950), McGohey, J.

Adler v. *McKee*, 92 Fed. Supp. 613, 614 (S. D. N. Y., 1950), Noonan, J.

Masterpiece Productions v. *United Artists Corp.*, 94 Fed. Supp. 116, 117 (E. D. Pa., 1950), McGranery, J.

Tankel v. *Seiberling Rubber Co.*, 95 Fed. Supp. 987, 988 (N. D. Cal., 1951), Harris, J.

Nicol v. *J. C. Penney Co.*, 97 Fed. Supp. 83, 85 (E. D. Mich., 1951), Koscinski, J.

Dolly Toy Co. v. *Bancroft Rellim Corp.*, 97 Fed. Supp. 531, 534 (S. D. N. Y., 1951), Irving Kaufman, J.

Kasper v. *Union Pacific Ry.*, 97 Fed. Supp. 275, 276 (E. D. Pa., 1951), McGranery, J.

Mason v. *Chicago, R. I. P. Ry.*, 96 Fed. Supp. 361, 363 (W. D. Mo., 1951), Reeves, J.

Aircraft Marine Products v. *Burndy Engineering Co.*, 96 Fed. Supp. 588, 591 (S. D. Cal., 1951), Byrne, J.

James v. *American Pac. S. S. Co.*, 99 Fed. Supp. 1016 (S. D. N. Y., 1951), S. H. Kaufman, J.

Federal Electric Products Co. v. *Frank Adair Electric Co.*, 100 Fed. Supp. 8 (S. D. N. Y., 1951), Irving R. Kaufman, J.

Lehman v. *Napier*, 101 Fed. Supp. 313 (S. D. Iowa, 1951), Riley, J.

Ortiz v. *Union Oil Co. of California*, 102 Fed. Supp. 492 (S. D. N. Y., 1952), Weinfeld, J.

McDaniel v. *Drotman*, 103 Fed. Supp. 643 (W. D. Ky., 1952), Swinford, J.

Jerclaydon, Inc., v. *Hosio Products, Inc.*, 104 Fed. Supp. 122 (E. D. N. Y., 1952), Byers, J.

Anthony v. *R. K. O. Radio Pictures, Inc.*, 103 Fed. Supp. 56 (S. D. N. Y., 1951), S. H. Kaufman, J.

Tivoli Realty v. *Paramount Pictures, Inc.*, 103 Fed. Supp. 174 (D. Del., 1951), Rodney, J.

Reade Shirts, Inc., v. *Commonwealth Ins. Co. of New York*, 102 Fed. Supp. 941 (S. D. N. Y., 1952), McGohey, J.

Jenkins v. *Wilson Freight Forwarding Co.*, 104 Fed. Supp. 422 (S. D. N. Y., 1952), Irving Kaufman, J.

Lynch v. *Luckenbach S. S. Co.*, 104 Fed. Supp. 494 (S. D. N. Y., 1952), Leibell, J.

APPENDIX F.

The following cases either repudiate the doctrine of *Gulf Oil* v. *Gilbert* or otherwise hold that 28 U. S. C. 1404(a) affords the district court far more discretion than the doctrine of *forum non conveniens*:

Court of Appeals.

Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America v. *Southern Bus Lines*, 172 F. 2d 946, 948 (5th Cir., 1949), Sibley, C. J.

Jiffy Lubricator v. *Stewart-Warner Corp.*, 177 F. 2d 360, 362 (4th Cir., 1949), Parker, C. J.

Schoen v. *Mountain Producers Corp.*, 176 F. 2d 707 (3rd Cir., 1949).

All States Freight, Inc., v. *Modarelli*, ... F. 2d ....., (3rd Cir., May 8, 1952).

District Courts.

Brainard v. *Atchison, T. & S. F. Ry.*, 81 Fed. Supp. 211 (N. D. Ill., 1948), Campbell, J.

United States v. *E. I. duPont de Nemours & Co.*, 83 Fed. Supp. 233 (D. D. C., 1949), Holtzoff, J.

Greve v. *Gibraltar Enterprises*, 85 Fed. Supp. 410, 413 (D. N. M., 1949), Hatch, J.

United States v. *Gerber*, 86 Fed. Supp. 175, 178 (E. D. Pa., 1949), Bard, J.

United States v. *Briggs*, 86 Fed. Supp. 178 (E. D. Pa., 1949), Bard, J.

White v. *Employers' Liability Assurance Corp.*, 86 Fed. Supp. 910, 912 (E. D. S. C., 1949), Wyche, J.

United States v. *E. I. duPont de Nemours & Co.*, 87 Fed. Supp. 962, 965 (N. D. Ill., 1950), La-Buy, J.

Huff v. *Nashville & Chattanooga Ry.*, 88 Fed. Supp. 735, 736 (S. D. N. Y., 1949), Rifkind, J.

McCarley v. *Foster-Milburn Co.*, 89 Fed. Supp. 643, 647 (W. D. N. Y., 1950), Knight, J. (order set aside by C. A. 2).

Spence v. *Norfolk & W. Ry.*, 89 Fed. Supp. 823, 824 (N. D. Ohio, 1950), Freed, J.

APPENDIX G.

I. The following State Statutes provide for a change of venue for reasons of *forum non conveniens*:

1. Arizona—2 Arizona Code Annotated, 1939, Sec. 21-104. Change of venue for cause—decision reviewable —if either party to a civil action pending with superior court shall, after answer has been filed, file an affidavit in the action alleging any of the following grounds therefor and give five days notice to the opposite party, the venue thereof may be changed as hereinafter provided:

> "(2) That the convenience of witnesses and the ends of justice would be promoted by the change."

2. California—C. C. P., Sec. 397 (cases in which court may change place of trial). The court may, on motion, change the place of trial in the following cases:

> "(3) When the convenience of witnesses and the ends of justice would be promoted by the change; * * *."

Sec. 963 (cases in which appeal may be taken from superior court). An appeal may be taken from a superior court in the following cases:

> "2. From an order granting a new trial or denying a motion for judgment notwithstanding the verdict, or granting or dissolving an injunction, or refusing to grant or dissolve an injunction, or appointing a receiver, or dissolving or refusing to dissolve an attachment, or changing or refusing to change the place of trial."

3. Colorado—Rule 98-F. Change of venue may be granted when action is brought in the wrong county or

when the convenience of witnesses or the ends of justice would be promoted thereby.

4. Idaho—I. C. A., Sec. 5-406. Change of Venue.

"(3) When the convenience of witnesses and the ends of justice would be promoted by the change."

5. Indiana—Indiana Statutes, Sec. 190 (Baldwin, 1934). The Court in term, or the judge thereof in vacation, shall change the venue of any civil action upon the application of either party, made upon affidavit showing one or more of the following causes:

"Fifth. Showing to the satisfaction of the court that the convenience of witnesses and the ends of justice would be promoted by the change."

6. Minnesota—2 Minn. Stat., 1945, c. 542, Sec. 542.11. Change of Venue by Order of Court; Grounds. The venue of any civil action may be changed by order of the Court in the following cases:

"(4) When the convenience of witnesses and the ends of justice would be promoted by the change."

7. Montana—Rev. Codes, Sec. 9098. The court or judge must, on motion, change the place of trial in the following cases:

"(3) When the convenience of witnesses and the ends of justice would be promoted by the change."

8. Nevada—Nev. C. L., Sec. 8572. The court may, on motion, change the place of trial in the following cases:

"(3) When the convenience of witnesses and the ends of justice would be promoted by the change."

9. New Hampshire—Rev. Laws of N. H., 1942, c. 384, Sec. 3. The superior court may change the venue in any civil proceeding when justice or convenience requires it.

10. New York—(Civil Practice Act, Sec. 187, Thompson's Laws of New York, 1939). Change of place of trial. The Court, by order, may change the place of trial of an action in the Supreme Court in either of the following cases:

"(3) Where the convenience of material witnesses and the ends of justice will be promoted by the change."

11. North Carolina—Gen. Stat., North Carolina, 1943, Sec. 1-83. The Court may change the place of trial in the following cases:

"2. When the convenience of the witnesses and the end of justice would be promoted by the change."

12. North Dakota—Compiled Laws of North Dakota, 1913, Sec. 7418. Defendant must ask change. The court may change the place of trial in the following cases:

"3. When the convenience of witnesses and the ends of justice would be promoted by the change."

13. Oregon—Oregon Code, 1930, Sec. 1-404. When place of trial may be changed. The court or judge thereof may change the place of trial, on the motion of either party to the action, when it appears from the affidavit of such party, or, if he is not a resident of the county, the affidavit of anyone in his behalf, either * * *.

"4. That the convenience of witnesses and the parties would be promoted by such change."

14. South Carolina—Code of Laws of South Carolina, 1932, Sec. 426. Changing place of trial. The court may change the place of trial in the following cases:

"3. When the convenience of witnesses and the ends of justice would be promoted by the change."

15. South Dakota—Compiled Laws of South Dakota, 1929, Sec. 2328. The Court may change the place of trial in the following cases:

> "3. When the convenience of witnesses and the ends of justice will be promoted by the change."

16. Utah—Rev. Stat. of Utah, 1933, Code of Civil Procedure, Secs. 104-4-9. Change of venue; Grounds. The Court may, on motion, change the place of trial in the following cases:

> "3. When the convenience of witnesses and the ends of justice will be promoted by the change."

17. Washington—Rem. Rev. Stat., Sec. 209. The Court may, on motion, change the place of trial when satisfied that:

> "* * * the convenience of witnesses or the ends of justice would be forwarded by the change."

18. Wisconsin—Wis. Stat., 1949, Sec. 261.04. Change of venue, grounds for. The court or the presiding judge thereof may change the place of trial in the following cases:

> "(2) When the convenience of witnesses and the ends of justice would be promoted."

19. Wyoming—Wyoming Rev. Stat., 1931, Sec. 89-1101. Causes for changes in civil actions—Affidavit. Whenever either party to a civil action in any district court of the state shall file an affidavit in the case, stating one or more of the following causes:

> "(7) When the affidavit shall show to the satisfaction of the court or a judge that the convenience of witnesses or the ends of justice would be promoted thereby."

In either case the court in term or the judge in vacation shall, within ten days after filing such affidavit, make and enter an order changing the venue in such action or calling on some other judge of the district court of the State to preside at the trial of the case as hereinafter provided; provided, the presiding judge may on his own motion grant at any time a change of judge or a change of venue when it appears that the ends of justice would be promoted thereby.

II. The following are representative state decisions providing for review of motions for change of venue either by appeal or by extraordinary writs.

California:

Barber v. *Palo Verde Mut. Water Assoc.*, 246 Pac. 1044 (Cal., 1926) (Appeal).

Rice v. *Schubert*, 226 Pac. 2d 50 (D. C. A. Cal., 1951) (Appeal).

Idaho:

Moscow Vets Club, Inc., v. *Bishop*, 207 Pac. 2d 503 (Idaho, 1949) (Appeal).

Sweeney v. *American National Bank*, 136 Pae. 2d 973 (Idaho, 1943) (Appeal).

Indiana:

State ex rel. Lindsey v. *Beavers*, 75 N. E. 2d 660 (Ind., 1947) (Mandamus).

State ex rel. Van Horne v. *Sullivan*, 188 N. E. 672 (Ind., 1934) (Mandamus).

Minnesota:

Miller v. *Anchor Casualty Co.*, 45 N. W. 2d 705 (Minn., 1951) (Mandamus).

State ex rel. Hilton v. *District Court of Ramsey County*, 198 N. W. 667 (Minn., 1924) (Mandamus).

Montana:

Maio v. *Greene*, 137 Pac. 2d 670 (Mont., 1943) (Appeal).

Conway v. *Fabian*, 63 Pac. 2d 1022 (Mont., 1936) (Appeal).

Nevada:

Stocks v. *Stocks*, 183 Pac. 2d 617 (Nev., 1947) (Appeal).

Fabbi v. *First National Bank of Nevada*, 153 Pac. 2d 122 (Nev., 1944) (Appeal).

New York:

Seeley v. *New York Tel. Co.*, 102 N. Y. S. 2d 277 (App. Div., 3d Dept., 1951) (Appeal).

Mau-Ste. Fallsburg Corp. v. *Cohen*, 103 N. Y. S. 2d 490 (App. Div., 2d Dept., 1951) (Appeal).

North Carolina:

Hartford Accident & Indemnity Co. v. *Hood*, 34 S. E. 2d 204 (N. C., 1945) (Appeal).

Howard v. *Queen City Coach*, 193 S. E. 138 (N. C., 1937) (Appeal).

North Dakota:

Ott v. *Kelley*, 252 N. W. 269 (N. D., 1934) (Appeal).

McConnen v. *Sletten*, 213 N. W. 483 (N. D., 1927) (Appeal).

Oregon:

Best v. *Parkes*, 161 Pac. 255 (Ore., 1916) (Mandamus).

South Carolina:

Smith v. *Atlantic Coast Line Ry.*, 63 S. E. 2d 311 (S. C., 1951) (Appeal).

Reynolds v. *Atlantic Coast Line Ry.*, 59 S. E. 2d 344 (S. C., 1950) (Appeal).

South Dakota:

Herron v. *Fox*, 288 N. W. 459 (N. D., 1939) (Appeal).

Olson v. *City of Sioux Falls*, 262 N. W. 85 (S. D., 1935) (Appeal).

Utah:

Pace v. *Wolf*, 289 Pac. 1102 (Utah, 1930) (Mandamus).

Hale v. *Baker*, 259 Pac. 928 (Utah, 1927) (Mandamus).

Washington:

State ex rel. Bugenhagen v. *Superior Court for Pierce County*, 177 Pac. 2d 885 (Wash., 1947) (Certiorari).

State ex rel. Beffer v. *Superior Court for Whatcom County*, 100 Pac. 2d 6 (Wash., 1940) (Mandamus).

Wisconsin:

State ex rel. Jefson v. *Mahoney*, 235 N. W. 926 (Wis., 1931), (Mandamus).

State ex rel. Nichols v. *Circuit Court of Outagamie County*, 208 N. W. 490 (Wis., 1926) (Certiorari).

Wyoming:

State ex rel. Poston v. *District Court of Eighth Judicial District, etc.*, 269 Pac. 35 (Wyo., 1928) (Prohibition).